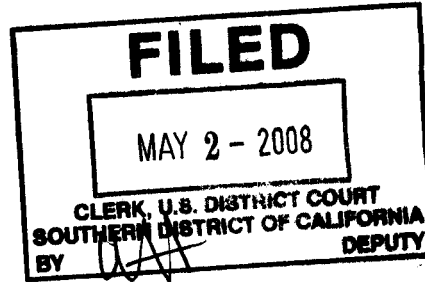


MA ERIC W. BURTON # F02720
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CORCORAN, CA 93212
IN PRO PER.



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In Pro Per

UNITED STATES DISTRICT COURT
SOUTHERN CALIFORNIA DISTRICT

~~CALIFORNIA SUPERIOR COURT~~ *ENN EUB*

IN AND FOR THE COUNTY OF S.D. CA.

ERIC WILTON BURTON # F02720

DATE: 4-27-08

CASE No. 08-0325 LAB (FOR)

Petitioner/~~Plaintiff~~

vs.

DIRECTOR C.D.C.R.

~~Defendant~~/Respondent.

EX-PARTE MOTION FOR APPOINTMENT
OF COUNSEL, AND/OR OTHER ALTERNA-
TIVE RELIEF, DECLARATION, MEMOR-
ANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF. PURSUANT TO
DILLON V. U.S. (9TH CIR. 1962) 307 F.2d
445

TO: THE PRESIDING JUDGE OF THE ABOVE ENTITLED COURT:

COMES NOW: ERIC W. BURTON, Defendant in the above
(Your Name)

styled cause of action, acting in propria persona herein for the
limited purposes stated below, and respectfully moves this Honor-
able Court for an order appointing counsel to represent him in any
and all further proceedings against him that may affect his
present or future economic interests, or in the alternative, order
his personal appearance at all such future hearings, including law
and motion, pretrial or grant him a continuance to prepare and
trial, or grant him a continuance to prepare or otherwise seek
such counsel, or abate or otherwise defer trial of the action
against him until he should possibly secure counsel or be
released from custody.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant submits the following points and authorities in support of his motion:

COMPLEX CASE SEE ARGUMENT ALL ON VIO. & CIV. RIGHTS (1962) 307 F.2d 445
AN INDIGENT PRISONER WHO IS A DEFENDANT
IN A CIVIL ACTION IS ENTITLED TO ACCESS TO
THE COURTS TO BE HEARD IN HIS DEFENSE THERETO.

In 1976, our Supreme Court decided that as a matter of both due process and equal protection under both the Federal and California Constitutions, an indigent prisoner who is a defendant in "a bona fide legal action threatening his interests" he is entitled to access to the courts to be heard in his defense. PAYNE v. SUPERIOR COURT, (1976) 17 Cal.3d 908, 919, 927; 132 Cal. Rptr. 405; 553 P.2d 565. This principle was reaffirmed nine years later by the same court. YARBROUGH v. SUPERIOR COURT, (1985) 39 Cal.3d, 197, 200; 216 Cal.Rptr. 425; 702 P.2d 583. Just exactly how this access is to be achieved to to be determined after a hearing and by the exercise of discretion by the trial court. (Ibid.)

One possible solution - to accord defendant the right to a personal appearance was discounted in PAYNE as not feasible so long as prisoners are denied the access to free legal services and unable to prepare a propria persona defense. YARBROUGH, supra at page 203.

Another alternative is to require trial courts to defer trial actions against prisoners until their release. When this course of action is not prohibited by law (see, e.g., Code Civil Procedures, § 1054) and postponement will not substantially prejudice the rights of plaintiffs, trial courts may exercise their discretion in this manner.

PAYNE v. SUPERIOR COURT, supra, 17 Cal.3d 908 at page 203. The

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1 court must consider whether access could be provided by abating
2 the matter until defendant is released from custody and therefore
3 better able to make his own arrangements. YARBROUGH, supra, at
4 page 206. As to the question of continuance:

5 It must be remembered that, however soon liability and
6 damages are litigated, plaintiff's hope of recovery from an
7 incarcerated indigent defendant cannot possibly take wing
8 until release from prison. (Ibid.)

9 Of all the possible solutions suggested, the Supreme
10 Court "recognized that, in some instances, the only solution -
11 the only way to secure access - was the appointment of counsel."
12 Id. at 203.

13 In an appropriate case, and as a last alternative, appoint-
14 ment of counsel may be the only way to provide an incar-
15 cerated, indigent civil defendant with access to the courts
16 for the protection of threatened personal and property
17 rights.

18 YARBROUGH, supra, at pp. 200-201. A determination that counsel
19 would not be helpful on a question of liability does not, however,
20 foreclose a need for counsel on an issue of the amount of possible
21 damages. Id. at page 206. In PAYNE, supra, the Court held "that
22 denial of appointed counsel to an indigent prisoner, when no
23 other relief will preserve his right of access to the courts. is
24 constitutionally impermissible."

25 CONCLUSION

26 Based on the foregoing, this Court should hold an evidentiary
27 hearing at which it should make findings of fact and conclusions
28 of the law which it should exercise its informed discretion
29 and grant defendant such relief as protects his right of access
30 to this Court to defend herein.

ERIC W. BURTON #F02720
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This motion is hereby made by these pleadings on the grounds that, as a matter of state and federal due process and equal protection, defendant is entitled to access to a civil court to be heard in his defense to the claim alleged against him in this action.

This motion and the attached declaration and memorandum of points and authorities filed herewith, on all the papers and records on file in this action, and on such further evidence as may hereafter be admitted in any evidentiary hearing held pursuant to this motion.

DATED: 4-27-08

Your name typed here -

Respectfully submitted,
Eric W. Burton #F02720
ERIC W. BURTON
Defendant, in propria persona
For Limited Purposes